

In the Matter of	)	
	)	
IBM CORPORATION	)	FOIA Control No. 2008-048
	)	
On Request for Inspection of Records	)	

**Released: August 3, 2010**

<sup>6</sup> See *United Talmudical Academy, Brooklyn, New York*, 15 FCC Rcd 423, 424-25 ¶ 4 (2000). See also <http://www.usac.org/fund-administration> (information concerning USAC).

3. IBM's FOIA Request sought records pertaining to two COMAD letters sent by SLD to IBM and one sent to El Paso that sought repayment of \$19.4 million in funds that SLD found had been disbursed in Funding Year 2001 in violation of E-Rate funding rules.<sup>7</sup> IBM sought two categories of records: (1) "all documents that USAC relied upon in making its decision including, but not limited to, [El Paso's] responses to USAC's eligibility determinations and questions; all communications between USAC and [El Paso] including e-mails, phone conversations, and memoranda; and, all USAC letters to [El Paso] and [El Paso's] responses;" and (2) "all of the documents including correspondence, e-mails, phone records, and memoranda, that evidence the ineligible products and services provided and improperly disbursed funds that USAC relied upon to support its findings."<sup>8</sup> In its AFR, IBM clarifies that it seeks "any document that reflects a formal decision by USAC or the Commission and/or formal policy guidance provided by the Commission to USAC on the issue of cost effectiveness and cost allocation and any other programmatic or rule violation set forth in the COMAD letters."<sup>9</sup> IBM characterizes itself, as El Paso's service provider, as "an interested and aggrieved party."<sup>10</sup> IBM states that it needs the requested information to file a meaningful appeal of SLD's decision.<sup>11</sup>

4. WCB responded to IBM's FOIA request by releasing 58 pages of redacted documents and withholding 2,584 pages of documents.<sup>12</sup> WCB withheld under FOIA Exemption 2<sup>13</sup> materials from the underlying administrative record that support the COMAD letters, including internal e-mails discussing review of the El Paso funding applications, reviewer notes, internal evaluative documents, and internal work papers.<sup>14</sup> WCB stated that these documents supply detailed information concerning internal processes for evaluating compliance with service and

---

<sup>7</sup> Letter from Schools and Library Division, Universal Service Administrative Company to Christine Hill, International Business Machines Corporation (Sept. 25, 2007) (Re Funding Request Numbers (FRNs) 64846, 648758, 648793, 648960); Letter from Schools and Library Division, Universal Service Administrative Company to Christine Hill, International Business Machines Corporation (Sept. 25, 2007) (Re FRN 648729); Letter from Schools and Library Division, Universal Service Administrative Company to Jack S. Johnston, El Paso Independent School District (Sept. 25, 2007) (Re FRN 648960).

<sup>8</sup> Request at 1-2.

<sup>9</sup> AFR at 6.

<sup>10</sup> Request at 1; AFR at 2, 8.

<sup>11</sup> Request at 2. IBM has not appealed USAC's determinations regarding funding made in the COMAD letters under discussion.

<sup>12</sup> Letter from Kirk S. Burgee, Chief of Staff, WCB to Ms. Cynthia Schultz (Dec. 27, 2007) (Response). Under established policy, FOIA requests seeking USAC records are directed to the Commission, where WCB is deemed the custodian of the records. See *Inter-Tel Technologies, Inc.*, 19 FCC Rcd 5204, 5204 n. 3 (2004). See also <http://www.usac.org/privacy.aspx>.

<sup>13</sup> 5 U.S.C. § 552(b)(2). Exemption 2 covers matters "related solely to the internal personnel rules and practices of an agency."

<sup>14</sup> Response at 2. It appears that this material also falls within the scope of Exemption 7(E). See note 20, *infra*.

product eligibility requirements and “would provide a blueprint for those wishing to frustrate or defeat such reviews.”<sup>15</sup>

Pursuant to FOIA Exemption 4,<sup>16</sup> WCB withheld El Paso’s Form 471, Item 21 attachment.<sup>17</sup> WCB found that Item 21 contained detailed financial information that the school district would not customarily make public, such as how much El Paso intends to spend on services. WCB further found that this information, if released, could cause substantial competitive harm to El Paso. WCB also withheld, under FOIA Exemption 5,<sup>18</sup> internal e-mails discussing the review of El Paso’s funding application, reviewer notes, internal evaluative documents, and internal work papers.<sup>19</sup> WCB stated that these materials reflected pre-decisional, deliberative discussions and that disclosure of these materials would harm the deliberative process. Finally, WCB withheld under FOIA Exemption 7(E)<sup>20</sup> all USAC letters to El Paso and El Paso’s responses, including its responses to USAC’s eligibility determinations and questions.<sup>21</sup> WCB indicated that these materials contained information concerning investigative techniques and guidelines. According to WCB, disclosure of these techniques and guidelines would risk circumvention of the review process and provide a blueprint for those wishing to frustrate or defeat such reviews and enforcement measures.<sup>22</sup>

5. In its application for review, IBM challenges the applicability of the exemptions on which WCB relied in withholding records.<sup>23</sup> For the reasons discussed below, we find that the

---

<sup>15</sup> *Id.*

<sup>16</sup> 5 U.S.C. § 552(b)(4). Exemption 4 covers “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

<sup>17</sup> Response at 2. Applicants for E-Rate funding (in this case El Paso) submit an FCC Form 471, which describes the services eligible for funding that the applicant has contracted for with a service provider (in this case IBM). See *Academy of Careers and Technologies San Antonio, TX*, 21 FCC Rcd 5348, 5348-49 ¶ 2 (2006) (describing the E-Rate application process).

<sup>18</sup> 5 U.S.C. § 552(b)(5). Exemption 5 covers “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” Exemption 5 encompasses the deliberative process privilege, which is intended to “prevent injury to the quality of agency decisions.” See *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>19</sup> Response at 3.

<sup>20</sup> 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) covers “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

<sup>21</sup> Response at 3.

<sup>22</sup> *Id.*

<sup>23</sup> Additionally, IBM, citing *Schiller v. NLRB*, 964 F.2d 1205, 1210 (D.C. Cir. 1992), asserts that WCB should have furnished a “privilege log” detailing each of the documents withheld, the source of the documents, and the specific exemption applied. AFR at 5. This requirement, however, relates to the “Vaughn index,” which is filed in connection with a motion for summary judgment in federal court and which is not required in an initial response to a FOIA request. See *Schwarz v. U.S. Dep’t of Treasury*, 131 (continued. . . )

FCC Form 471, Item 21 attachment should not be withheld under Exemption 4 and that WCB otherwise correctly applied these exemptions.

### III. DISCUSSION

6. **Exemption 2.** IBM contends that WCB failed to demonstrate the prerequisites for applying Exemption 2 to the material being withheld. Specifically, IBM asserts that Exemption 2, the exemption for internal personnel rules and practices, applies only to material used predominantly for internal purposes.<sup>24</sup> IBM states: “to the extent that the responsive information includes communications between USAC, or its contractor, and non-agency third parties (*i.e.*, [El Paso]), the predominantly internal requirement is not satisfied. Therefore, the invocation of Exemption 2 with respect to such responsive documents must fail.”<sup>25</sup> WCB did not, however, withhold any communications between USAC and El Paso based on Exemption 2. Rather, WCB applied Exemption 2 to “internal [USAC] e-mails that contain communications discussing the review, reviewer notes, internal evaluative documents, and internal work papers.”<sup>26</sup> IBM’s challenge to the applicability of Exemption 2 is therefore without any basis and is accordingly denied.<sup>27</sup>

7. **Exemption 4.** IBM argues that Exemption 4 does not apply to the information contained in El Paso’s FCC Form 471, Item 21 attachment, which contains a detailed description of the products and services for which discounts are being sought.<sup>28</sup> According to IBM, the information contained in the attachment was presumably based on information provided to El Paso by IBM. Thus, IBM asserts that the information belongs to IBM and cannot be deemed a “trade secret or commercial or financial information” that belongs to El Paso. Moreover, IBM challenges WCB’s finding that release of the information in the attachment could cause substantial competitive harm to El Paso. IBM submits that the information is over five years old, that El Paso is a public entity that is required to conduct a competitive bid process according to federal, state, and local procurement laws, and that the information “constitutes a public record.”<sup>29</sup> IBM also challenges WCB’s finding that the information was “provided mandatorily to the government,”<sup>30</sup> since neither USAC nor its contractor is a government agency. Finally,

---

(Continued from previous page)

F. Supp. 2d 142, 147 (D.D.C. 2000) (Vaughn index not required at the administrative level), *aff’d*, 2001 WL 674636, No. 00-5453 (D.C. Cir. 2001).

<sup>24</sup> AFR at 6.

<sup>25</sup> *Id.* [Footnote omitted.]

<sup>26</sup> Response at 2.

<sup>27</sup> In its section on Exemption 2, IBM also argues that “IBM is not seeking release of documents that contain predecisional or deliberative discussions by the Commission, but rather any document that reflects a formal decision by USAC or the Commission and/or formal policy guidance . . . .” AFR at 6. This argument more properly relates to Exemption 5. *See* para. 9, *infra*.

<sup>28</sup> AFR at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* *See also* Response at 2.

IBM urges that “as an interested and aggrieved party” it has a right to see the documentation upon which USAC relied in making its decision.<sup>31</sup>

8. We agree with IBM that the facts before us do not warrant withholding the FCC Form 471, Item 21 attachment under Exemption 4 as confidential commercial or financial information. Although we would in many cases find that the detailed technical information, including unit prices, set forth in the attachment would likely cause competitive harm and should therefore be withheld,<sup>32</sup> we do not have a basis to make such a finding on the particular facts of this case.<sup>33</sup> To the extent that the information in the attachment relates to the business of IBM, the vendor of the products and services involved, we credit IBM’s assertion that disclosure of the information would not cause it any competitive harm.<sup>34</sup> As to El Paso, the fact that it is a governmental body and not a profit-making enterprise does not necessarily rule out the applicability of Exemption 4 to its interest in transactions for commercial products and services.<sup>35</sup> The record that came to us, however, did not disclose El Paso’s position as to the confidentiality of the attachment. The Office of General Counsel therefore solicited El Paso’s views on the issue.<sup>36</sup> In response, El Paso indicated that it believed that the attachment would be deemed public information under Texas law and that it was “not in a position to object to disclosure.”<sup>37</sup> Because neither party that might conceivably suffer competitive harm from disclosure asks us to withhold the attachment, we conclude that the attachment should not be withheld under Exemption 4 and should be disclosed.

9. **Exemption 5.** IBM challenges the application of the deliberative process privilege encompassed by Exemption 5 on two grounds. First, IBM argues that Exemption 5 does not apply because IBM is not seeking the release of documents that contain predecisional or

---

<sup>31</sup> AFR at 8.

<sup>32</sup> We note, for example, that the contents of the application accessible on the USAC website do not include the attachment. See FCC Form 471, accessible via [http://www.sl.universalservice.org/FY3\\_form471/ExtDisplay471\\_StartSearch.asp](http://www.sl.universalservice.org/FY3_form471/ExtDisplay471_StartSearch.asp). Accessing the attachment requires use of a security code.

<sup>33</sup> Competitive harm is a relevant factor here because the submission of the information in question was not voluntary. See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878-79 (D.C. Cir. 1992), cert. denied, 507 U.S. 147 (1993). See also *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (1974). Rather, the information was required to obtain a governmental benefit. See *Public Citizen Health Research Group v. FDA*, 964 F. Supp. 413, 414 n.1 (D.D.C. 1997) (information was required to obtain FDA approval of drug and was therefore not voluntarily submitted).

<sup>34</sup> AFR at 8. IBM’s position is thus the reverse of a situation provided for by our rules in which the third party owner of records seeks to bar a FOIA request based on the alleged confidentiality of the records. See 47 C.F.R. § 0.459(i), 0.461(i)(1).

<sup>35</sup> See *Starkey v. U.S. Dep’t of Interior*, 238 F. Supp. 2d 1188, 1195 (S.D. Cal. 2002) (release of ground water-related information on tribal trust land would cause competitive harm to Indian Tribe because it would adversely affect Tribe’s ability to negotiate its water rights or litigate that issue, and water is an article of commerce).

<sup>36</sup> See Letter from Joel Kaufman, Associate General Counsel to Stephen Stiles, Chief Technology Officer (September 24, 2009).

<sup>37</sup> See Letter from Stephen Stiles to Joel Kaufman (October 14, 2009).

deliberative discussions but rather “any document that reflects a formal decision by USAC or the Commission and/or formal policy guidance provided by the Commission to USAC . . . .”<sup>38</sup> Second, IBM argues that Exemption 5 does not apply to USAC because USAC is not an agency for purposes of the FOIA.<sup>39</sup>

10. The documents withheld under Exemption 5 consist of “internal e-mails that contain communications discussing the review [of El Paso’s application], reviewer notes, internal evaluative documents, and internal work papers.”<sup>40</sup> Our examination of this material indicates that it consists of discussion of questions relating to El Paso’s application that are preliminary to preparing and sending the COMAD letters, which constitute agency decisions for purposes of Exemption 5. As such, the material is predecisional and deliberative and, thus, within the scope of the deliberative process privilege encompassed by Exemption 5. In this regard, we reject IBM’s contention that such predecisional, deliberative material does not fall within the scope of Exemption 5, because it is not “intra-agency.” It is well-established that records prepared by entities with close ties to an agency, *e.g.*, consultants, are deemed intra-agency for purposes of Exemption 5.<sup>41</sup> Given USAC’s status as administrator of the E-Rate Program on behalf of the Commission, and the highly detailed legal relationship between USAC and the Commission as specified in the Commission’s rules and orders,<sup>42</sup> we similarly consider records generated by USAC to be intra-agency records.

---

<sup>38</sup> AFR at 6. To fall within the scope of the deliberate process privilege encompassed by Exemption 5, records must be both pre-decisional, *i.e.*, “[they were] generated before the adoption of an agency policy [*i.e.*, a decision],” and deliberative, *i.e.*, “[they reflect] the give-and-take of the consultative process. *Senate of the Commonwealth of Puerto Rico v. U.S. Dep’t of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987).

<sup>39</sup> AFR at 9.

<sup>40</sup> Response at 3.

<sup>41</sup> *See Government Land Bank v. GSA*, 671 F.2d 663, 665 (1st Cir. 1982) (noting that both parties agree that property appraisal prepared by outside consultant deemed intra-agency); *Lead Industries Ass’n, Inc. v. OSHA*, 610 F.2d 70, 83 (2nd Cir. 1979) (reports prepared by outside consultants deemed intra-agency), *citing Soucie v. David*, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971) (report prepared by outside consultant should be treated as an intra-agency memorandum of the agency that solicited it). *See also Dep’t of the Interior and Bureau of Indian Affairs v. Klamath Water Users Protective Ass’n*, 532 U.S. 1,9 (2001) (noting that some courts of appeals have held that in some circumstances a document prepared outside the Government may nevertheless qualify as an intra-agency memorandum).

<sup>42</sup> *See, e.g.*, 47 C.F.R. § 54.702(j) (USAC must provide Commission with full access to data collected pursuant to administration of universal service support programs); 47 C.F.R. § 54.701(a) (designating USAC as administrator of the universal service support mechanisms); 47 C.F.R. §§ 54.702(a),(j) (USAC shall be responsible for administering programs and must provide Commission with full access to data collected pursuant to administration of universal service support programs); *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, 20 FCC Rcd 11308, 11310 ¶ 4 (2005) (USAC administers the universal service fund in accordance with Commission rules and orders); *Changes to the Board of the National Exchange Carrier Association, Inc.*, 13 FCC Rcd 25058, 25067-68 (1998) (the Commission retains the ultimate control over the operation of the federal universal service support mechanisms through its authority to establish rules governing the support mechanisms and its review of administrative decisions that are appealed to the Commission). *See also Daniel E. Riordan*, 22 FCC Rcd 4316, 4318-19 ¶ 9 (2007) (describing USAC as operating under the oversight of the Commission).

11. **Exemption 7(E).** IBM contends that Exemption 7 does not apply to USAC because USAC is not a government agency with law enforcement duties.<sup>43</sup> IBM points out that USAC is a private not-for-profit corporation that is responsible for carrying out the day-to-day operations of the E-Rate program. IBM further observes that USAC does not have policy-making authority and that the responsibility for enforcing the rules applicable to the E-Rate program and the Communications Act belongs to the Commission, not USAC. In particular, IBM notes that to the extent USAC discovers a possible legal violation, it makes a referral to the Commission or to the Department of Justice.

12. Further, IBM argues that Exemption 7(E) does not justify withholding communications between USAC and El Paso, because the exemption only applies to internal agency materials.<sup>44</sup> In this regard, IBM argues that communications between USAC and El Paso are not confidential with respect to IBM and that they are simply communications on which IBM should have been copied as an interested party.

13. We find unpersuasive IBM's argument that Exemption 7 does not apply to USAC's records because USAC is not itself a law enforcement agency. The term "law enforcement" applies to regulatory proceedings, such as those of the FCC, in addition to criminal and civil actions.<sup>45</sup> Although USAC is not itself an agency with enforcement powers, it administers the E-Rate Program on behalf of the Commission<sup>46</sup> and USAC's actions are reviewable by the Commission.<sup>47</sup> Thus, the regulatory authority involved here is ultimately that of the Commission, just as it was in the case of the broadcast regulatory authority involved in *Kay*,<sup>48</sup> in which the Commission exercised that authority directly and Exemption 7 was found to apply. Accordingly, Exemption 7 applies to USAC's records as well.

14. Moreover, we disagree with IBM's assertion that Exemption 7(E) applies only to "internal" materials. Such an interpretation would tend to make Exemption 7(E) superfluous, because it would mean that records that could be withheld under Exemption 7(E) could also be withheld under Exemption 2, which permits withholding internal material if disclosure may risk circumvention of agency regulation.<sup>49</sup> In some cases, such as with respect to internal agency

---

<sup>43</sup> AFR at 9-11.

<sup>44</sup> *Id.* at 11-12.

<sup>45</sup> See *Kay v. FCC*, 976 F.Supp. 23, 37 (D.D.C. 1997), *aff'd*, 172 F.3d 919 (D.C. Cir. 1998). The exemption applies both to pending investigations and actual enforcement proceedings and proceedings that are regarded as prospective. *Id.* at 38. See also *Daniel E. Riordan*, 22 FCC Rcd at 4317-19 ¶¶ 6-9.

<sup>46</sup> See note 41, *supra*.

<sup>47</sup> See *id.*

<sup>48</sup> See note 44, *supra*.

<sup>49</sup> See *Schwaner v. Dep't of the Air Force*, 898 F.2d 793, 794 (D.C. Cir. 1990) (under Exemption 2, material that meets the test of "predominant internality" will be withheld if "disclosure may risk circumvention of agency regulation" [high 2] or "the material relates to trivial administrative matters of no genuine public interest" [low 2]). See also *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1065 (D.C. Cir. 1981) (holding that it would be "inconsistent to no small degree" if Exemption 2 would not bar the disclosure of investigatory techniques when contained in a manual restricted to internal (continued. . . )

manuals and guidelines, both Exemption 2 and Exemption 7(E) might apply to exempt the material from disclosure.<sup>50</sup> Exemption 7(E), however, has also been applied to materials that are not internal, provided that they are not widely known to the public.<sup>51</sup> Thus, for example, courts have upheld withholding under Exemption 7(E) the specific questions asked of agency outsiders during polygraph examinations, on the grounds that giving subjects of future polygraph examinations the opportunity to examine specific sequences of questions would enable them to undermine the integrity of the examination.<sup>52</sup> Questions actually asked during a polygraph examination would not be internal material because they are disclosed to the subject of the examination, although not to the general public. Accordingly, even though we do not deem the records requested by United to be predominantly internal, this determination does not bar application of Exemption 7(E).

**15. Segregability.** Finally, IBM asserts that WCB did not explain why non-exempt material could not be segregated from the withheld documents and disclosed.<sup>53</sup> We have examined those records withheld by WCB that we agree are exempt, and we can discern no non-exempt material that can be segregated from the withheld records and still retain any significant meaning.<sup>54</sup>

**16. Discretionary Release.** While it is true that “[e]ven when particular information falls within the scope of a FOIA exemption, federal agencies generally are afforded the discretion to release the information on public interest grounds,”<sup>55</sup> we decline to exercise our discretion to

---

(Continued from previous page)

use, but that Exemption 7(E) would exempt from disclosure the release of such techniques if contained in an “investigatory record”).

<sup>50</sup> See *Tax Analysts v. IRS*, 294 F.3d 71, 79 (D.C. Cir. 2002) (holding that Exemption 7(E) applies to internal agency materials relating to guidelines, techniques, sources, and procedures for law enforcement investigations or procedures, such as internal IRS memorandums); *Daniel E. Riordan*, 22 FCC Rcd at 4317-20 ¶¶ 5-13 (applying both Exemptions 7(E) and 2).

<sup>51</sup> See *Coleman v. FBI*, 13 F. Supp.2d 75, 83-84 (D.D.C. 1998) (withholding documents related to FBI techniques that had already been publicly identified by the FBI, where the specific manner and circumstances of the techniques were not generally known to the public).

<sup>52</sup> See *Blanton v. Dep’t of Justice*, 64 Fed. Appx. 787, 788-89 (D.C. Cir. 2003) (withholding polygraph question used to interrogate individuals in particular investigation); *Coleman*, 13 F. Supp. 2d at 83-84 (release of details concerning polygraph examination involving requester withheld because disclosure of polygraph matters would lessen their effectiveness); *Edmonds v. FBI*, 272 F.Supp.2d 35, 55-56 (D.D.C. 2003) (release of polygraph information involving requester could defeat the usefulness of polygraph examinations in the future).

<sup>53</sup> AFR at 12. IBM also complains that WCB did not define the functional document categories for the withheld documents. We find that WCB adequately described the documents being withheld and the reasons for withholding. Response at 3.

<sup>54</sup> See *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) (government may show that material not reasonably segregable if result of redaction would be essentially meaningless set of words and phrases).

<sup>55</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24818 (1998), citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 292-93 (1979). See also *See Memorandum to Heads of Executive Departments and Agencies, Freedom of* (continued. . . )

do so here. We do not discern any overriding public interest in releasing the records that we have determined are exempt from disclosure under Exemptions 2, 5, and 7(E) because release would harm the integrity of the Commission's processes.<sup>56</sup>

#### IV. ORDERING CLAUSES

16. Accordingly, it is ordered that the application for review filed by IBM Corporation IS GRANTED IN PART AND DENIED IN PART. IBM may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).

17. The officials responsible for this action are the following: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

(Continued from previous page)

*Information Act*, 74 Fed. Reg. 4683 (2009) (President Obama's memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>>

<sup>56</sup> See U.S. Department of Justice, Office of Information Policy, FOIA Post, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines Creating a "New Era of Open Government,"* (2009), available at <<http://www.usdoj.gov/oip/foiapost/2009foiapost8.htm>> (recognizing that discretionary release of records is less likely when the requirements of Exemption 4 are met for withholding records).